

SENATE BILL NO. 2251

Introduced by

Senators Armstrong, Schaible, Nelson

Representatives Steiner, Thoreson, Oversen

1 A BILL for an Act to amend and reenact subsection 1 of section 6-08-16, subsection 3 of section
2 6-08-16.2, sections 12.1-21-04, 12.1-23-02.1, 12.1-23-05, 12.1-23-06, 12.1-23-07, and
3 12.1-23-08, subsection 1 of section 12.1-23-09, and sections 12.1-24-01, 12.1-24-03,
4 26.1-02.1-05, and 29-03-22 of the North Dakota Century Code, relating to the penalties for
5 crimes for which a monetary amount triggers the level of penalty; and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-08-16 of the North Dakota Century
8 Code is amended and reenacted as follows:

- 9 1. A person may not, for that person, as the agent or representative of another, or as an
10 officer or member of a firm, company, copartnership, or corporation, make, draw, utter,
11 or deliver any check, draft, or order, or authorize an electronic funds transfer, for the
12 payment of money upon a bank, banker, or depository, if at the time of the making,
13 drawing, uttering, electronically authorizing, or delivery, or at the time of presentation
14 for payment, if the presentation for payment is made within fourteen days after the
15 original delivery thereof, there are not sufficient funds in or credit with the bank,
16 banker, or depository to meet the check, draft, electronic funds transfer, or order in full
17 upon its authorized presentation. Violation of this subsection is:
- 18 a. An infraction if the amount of insufficient funds or credit is not more than fiftyone
19 hundred dollars;
- 20 b. A class B misdemeanor if the amount of insufficient funds or credit is more than
21 fiftyone hundred dollars but not more than twofive hundred fifty dollars, or if the
22 individual has pled guilty or been found guilty of a violation of this section within
23 three years of issuing an insufficient funds check, draft, or order;

- 1 c. A class A misdemeanor if the amount of insufficient funds or credit is more than
2 ~~twofive~~ hundred fifty dollars but not more than ~~five hundred~~one thousand dollars,
3 or if the individual has pled guilty or been found guilty of two violations of this
4 section within three years of issuing an insufficient funds check, draft, or order; or
5 d. A class C felony if the amount of insufficient funds or credit is more than ~~five-~~
6 ~~hundred~~one thousand dollars, or an individual has pled guilty or been found guilty
7 of three or more violations of this section within five years of willfully issuing an
8 insufficient funds check, draft, or order.

9 **SECTION 2. AMENDMENT.** Subsection 3 of section 6-08-16.2 of the North Dakota Century
10 Code is amended and reenacted as follows:

- 11 3. A person who, for that person or an agent or representative of another, willfully as
12 defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the
13 instrument was for at least ~~five hundred~~one thousand dollars or that person, agent, or
14 representative of another, issues more than one instrument wherein the aggregate
15 total of all instruments issued exceeds ~~five hundred~~one thousand dollars, and at the
16 time of issuing the instrument, the drawer does not have an account with the bank or
17 depository on which the instrument is drawn.

18 **SECTION 3. AMENDMENT.** Section 12.1-21-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-21-04. Release of destructive forces.**

- 21 1. A person is guilty of a class ~~BAA~~ felony if ~~he~~that person intentionally causes a
22 catastrophe ~~by any means and is guilty of a class C felony if he does so willfully.~~
23 2. ~~A person is guilty of a class C felony if he willfully creates a risk of catastrophe,~~
24 ~~although no fire, explosion, or other destruction results.~~
25 ~~3. A person who knowingly does an act which causes or which he knows is likely to~~
26 ~~cause a catastrophe, or assents to the doing of such act, is guilty of a class C felony if~~
27 ~~he willfully fails to take reasonable measures to prevent the catastrophe.~~
28 4. Catastrophe means ~~serious bodily injury to ten or more people or substantial damage~~
29 ~~to ten or more separate habitations or structures or property loss in excess of five~~
30 ~~hundred thousand dollars~~damage to one or more structures in excess of five hundred

1 thousand dollars, or property loss in excess of five hundred thousand dollars or a
2 substantial risk of serious bodily injury or death to five or more individuals.

3 **SECTION 4. AMENDMENT.** Section 12.1-23-02.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **12.1-23-02.1. Disarming or attempting to disarm a law enforcement officer.**

6 Notwithstanding subdivision d of subsection 23 of section 12.1-23-05, a person is guilty of a
7 class C felony if, without the consent of the law enforcement officer, the person willfully takes or
8 removes, or attempts to take or remove, a firearm from a law enforcement officer engaged in
9 the performance of official duties.

10 **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-23-05. Grading of theft offenses.**

13 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the
14 property or services stolen exceed fifty thousand dollars in value.

15 2. Notwithstanding the provisions of subsection 23, theft under this chapter is a class B
16 felony if the property or services stolen exceed ten thousand dollars in value but do
17 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a
18 ~~class A or class B felony or to inflict serious bodily injury on the person threatened or~~
19 ~~on any other person.~~

20 2-3. Theft under this chapter is a class C felony if:

21 a. The property or services stolen exceed ~~five hundred~~ one thousand dollars in
22 value;

23 b. The property or services stolen are acquired or retained by threat and (1) are
24 acquired or retained by a public servant by a threat to take or withhold official
25 action, or (2) exceed ~~fifty~~ one hundred dollars in value;

26 c. The property or services stolen exceed ~~fifty~~ one hundred dollars in value and are
27 acquired or retained by a public servant in the course of official duties;

28 d. The property stolen is a firearm, ammunition, explosive or destructive device, or
29 an automobile, aircraft, or other motor-propelled vehicle;

30 e. The property consists of any government file, record, document, or other
31 government paper stolen from any government office or from any public servant;

- 1 f. The defendant is in the business of buying or selling stolen property and the
2 defendant receives, retains, or disposes of the property in the course of that
3 business;
- 4 g. The property stolen consists of any implement, paper, or other thing uniquely
5 associated with the preparation of any money, stamp, bond, or other document,
6 instrument, or obligation of this state;
- 7 h. The property stolen consists of livestock taken from the premises of the owner;
- 8 i. The property stolen consists of a key or other implement uniquely suited to
9 provide access to property the theft of which would be a felony and it was stolen
10 to gain such access;
- 11 j. The property stolen is a card, plate, or other credit device existing for the purpose
12 of obtaining money, property, labor, or services on credit, or is a debit card,
13 electronic fund transfer card, code, or other means of access to an account for
14 the purposes of initiating electronic fund transfers; or
- 15 k. The property stolen is a prescription drug as defined in section 43-15.3-01.
- 16 ~~3-4.~~ All other theft under this chapter is a class A misdemeanor, unless the requirements of
17 subsection ~~4~~5 are met.
- 18 ~~4-5.~~ Theft under this chapter of property or services of a value not exceeding ~~two~~five
19 hundred ~~fifty~~ dollars ~~shall be~~is a class B misdemeanor if:
- 20 a. The theft was not committed by threat;
- 21 b. The theft was not committed by deception by one who stood in a confidential or
22 fiduciary relationship to the victim of the theft; and
- 23 c. The defendant was not a public servant or an officer or employee of a financial
24 institution who committed the theft in the course of official duties.
- 25 The special classification provided in this subsection ~~shall apply~~applies if the offense is
26 classified under this subsection in the charge or if, at sentencing, the required factors
27 are established by a preponderance of the evidence.
- 28 ~~5-6.~~ Notwithstanding ~~the provisions of~~ subsection 3 of section 12.1-06-01, an attempt to
29 commit a theft under this chapter is punishable equally with the completed offense
30 when the actor has completed all of the conduct which the actor believes necessary
31 on the actor's part to complete the theft except receipt of the property.

1 ~~6-7.~~ For purposes of grading, the amount involved in a theft under this chapter shall be is
2 the highest value by any reasonable standard, regardless of the actor's knowledge of
3 such value, of the property or services which were stolen by the actor, or which the
4 actor believed that the actor was stealing, or which the actor could reasonably have
5 anticipated to have been the property or services involved. Thefts committed pursuant
6 to one scheme or course of conduct, whether from the same person or several
7 persons, may be charged as one offense and the amounts proved to have been stolen
8 may be aggregated in determining the grade of the offense.

9 **SECTION 6. AMENDMENT.** Section 12.1-23-06 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12.1-23-06. Unauthorized use of a vehicle.**

- 12 1. A person is guilty of an offense if, knowing that ~~he~~the person does not have the
13 consent of the owner, ~~he~~the person takes, operates, or exercises control over an
14 automobile, train, aircraft, motorcycle, motorboat, or other motor-propelled vehicle of
15 another.
- 16 2. It is a defense to a prosecution under this section that the actor reasonably believed
17 that the owner would have consented had ~~he~~the owner known of the conduct on which
18 the prosecution was based.
- 19 3. The offense is a class C felony if the vehicle is an aircraft or if the value of the use of
20 the vehicle and the cost of retrieval and restoration exceeds ~~five hundred~~one thousand
21 dollars. Otherwise the offense is a class A misdemeanor.

22 **SECTION 7. AMENDMENT.** Section 12.1-23-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-23-07. Misapplication of entrusted property.**

- 25 1. A person is guilty of misapplication of entrusted property if the person disposes of,
26 uses, or transfers any interest in property that has been entrusted to the person as a
27 fiduciary, or in the person's capacity as a public servant or an officer, director, agent,
28 employee of, or a person controlling a financial institution, in a manner that the person
29 knows is not authorized and that the person knows to involve a risk of loss or
30 detriment to the owner of the property or to the government or other person for whose
31 benefit the property was entrusted.

- 1 2. Misapplication of entrusted property is:
- 2 a. A class A felony if the value of the property misapplied exceeds fifty thousand
- 3 dollars.
- 4 b. A class B felony if the value of the property misapplied exceeds ten thousand
- 5 dollars but does not exceed fifty thousand dollars.
- 6 ~~b.c.~~ A class C felony if the value of the property misapplied exceeds ~~five hundred one~~
- 7 thousand dollars but does not exceed ten thousand dollars.
- 8 ~~e.d.~~ A class A misdemeanor if the value of the property misapplied exceeds ~~two five~~
- 9 hundred ~~fifty~~ dollars but does not exceed ~~five hundred one thousand~~ dollars.
- 10 ~~d.e.~~ A class B misdemeanor in all other cases.

11 **SECTION 8. AMENDMENT.** Section 12.1-23-08 of the North Dakota Century Code is

12 amended and reenacted as follows:

13 **12.1-23-08. Defrauding secured creditors.**

- 14 1. An owner of property who creates a security interest in such property may not
- 15 intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or otherwise
- 16 deal with property that is subject to the security interest without the prior consent of the
- 17 secured party if that action has the effect of hindering the enforcement of the security
- 18 interest.
- 19 2. A person may not destroy, remove, damage, conceal, encumber, transfer, or otherwise
- 20 deal with property that is subject to a security interest with the intent to prevent
- 21 collection of the debt represented by the security interest.
- 22 3. A person may not, at the time of sale of property that is subject to a security interest,
- 23 or is described in a certificate provided for under section 41-09-28, make false
- 24 statements as to the existence of security interests in the property, or as to the
- 25 ownership or location of the property.
- 26 4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02
- 27 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a
- 28 value of more than ~~five hundred one thousand~~ dollars, as determined under
- 29 subsection ~~6~~7 of section 12.1-23-05. In all other cases, violation of this section is a
- 30 class A misdemeanor.

1 **SECTION 9. AMENDMENT.** Subsection 1 of section 12.1-23-09 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. It is a defense to a prosecution under this chapter that:

4 a. The actor ~~honestly~~reasonably believed that ~~he~~the actor had a claim to the
5 property or services involved which ~~he~~the actor was entitled to assert in the
6 manner which forms the basis for the charge against ~~him~~the actor; or

7 b. The victim is the actor's spouse, but only when the property involved constitutes
8 household or personal effects or other property normally accessible to both
9 spouses and the parties involved are living together. The term "spouse", as used
10 in this section, includes persons living together as husband and wife.

11 **SECTION 10. AMENDMENT.** Section 12.1-24-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-24-01. Forgery or counterfeiting.**

14 1. A person is guilty of forgery or counterfeiting if, with intent to deceive or harm the
15 government or another person, or with knowledge that ~~he~~the person is facilitating such
16 deception or harm by another person, ~~he~~the person:

17 a. Knowingly and falsely makes, completes, or alters any writing; or

18 b. Knowingly utters or possesses a forged or counterfeited writing.

19 2. Forgery or counterfeiting is:

20 a. A class B felony if:

21 (1) The actor forges or counterfeits an obligation or other security of the
22 government; or

23 (2) The offense is committed pursuant to a scheme to defraud another or others
24 of money or property of a value in excess of ten thousand dollars, but not in
25 excess of fifty thousand dollars. If the value of the property exceeds fifty
26 thousand dollars, the offense is a class A felony.

27 b. A class C felony if:

28 (1) The actor is a public servant or an officer or employee of a financial
29 institution and the offense is committed under color of office or is made
30 possible by ~~his~~the actor's office;

- 1 (2) The actor forges or counterfeits foreign money or other legal tender, or
2 utters or possesses any forged or counterfeited obligation or security of the
3 government or foreign money or legal tender;
4 (3) The actor forges or counterfeits any writing from plates, dies, molds,
5 photographs, or other similar instruments designed for multiple
6 reproduction;
7 (4) The actor forges or counterfeits a writing which purports to have been made
8 by the government; or
9 (5) The offense is committed pursuant to a scheme to defraud another or others
10 of money or property of a value in excess of ~~one~~five hundred dollars.
11 c. A class A misdemeanor in all other cases.

12 **SECTION 11. AMENDMENT.** Section 12.1-24-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **12.1-24-03. Deceptive writings.**

- 15 1. A person is guilty of an offense if, with intent to deceive or harm the government or
16 another person, or with knowledge that ~~he~~the person is facilitating such a deception or
17 harm by another person, ~~he~~the person knowingly issues a writing without authority to
18 issue it or knowingly utters or possesses a deceptive writing.
19 2. The offense is a class B felony if it is committed pursuant to a scheme to defraud
20 another or others of money or property of a value in excess of ten thousand dollars.
21 The offense is a class C felony if:
22 a. The actor is a public servant or an officer or employee of a financial institution
23 and the offense is committed under color of office or is made possible by ~~his~~the
24 actor's office; or
25 b. The offense is committed pursuant to a scheme to defraud another or others of
26 money or property of a value in excess of ~~one~~five hundred dollars.
27 Otherwise it is a class A misdemeanor.

28 **SECTION 12. AMENDMENT.** Section 26.1-02.1-05 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **26.1-02.1-05. Penalties - Restitution.**

- 2 1. A violation of section 26.1-02.1-02.1 is a class C felony if the value of any property or
3 services retained exceeds five thousand dollars and a class A misdemeanor in all
4 other cases. For purposes of this section, the value of any property and services must
5 be determined in accordance with subsection ~~6~~7 of section 12.1-23-05.
- 6 2. In the event that a practitioner is adjudicated guilty of a violation of section
7 26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state of
8 the adjudication. The appropriate licensing authority shall hold an administrative
9 hearing to consider the imposition of administrative sanctions as provided by law
10 against the practitioner.
- 11 3. In addition to any other punishment, a person who violates section 26.1-02.1-02.1
12 must be ordered to make restitution to the insurer or to any other person for any
13 financial loss sustained as a result of the violation of section 26.1-02.1-02.1. The court
14 shall determine the extent and method of restitution.

15 **SECTION 13. AMENDMENT.** Section 29-03-22 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **29-03-22. Venue of multiple theft offenses involving credit cards.**

18 If any of a series of thefts can be charged as one offense for purposes of grading under
19 subsection ~~6~~7 of section 12.1-23-05, if each of those thefts involved the use of a credit card,
20 and if the total value of the property or services stolen is at least fifty dollars, venue for the
21 criminal action, in which the series of thefts is charged as one offense, is in any county where
22 any of the thefts was committed.